

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Aquila, Inc.

v.

Docket No. EL03-33-001

Public Service Company of Colorado

ORDER DENYING REHEARING

(Issued August 14, 2003)

1. In this order we deny rehearing of an order that set for hearing the allegations of Aquila, Inc. (Aquila) that the Public Service Company of Colorado (PS Colorado): (1) improperly collected certain costs through the fuel cost adjustment clause (FAC) contained in a power purchase agreement between the parties, and (2) imposed unjust and unreasonable FAC surcharges. This order benefits customers because it defines the proper scope of the upcoming hearing on these issues and allows the presiding judge and the parties to focus the litigation appropriately.

Background

2. In its December 18, 2002 complaint, Aquila alleged that PS Colorado has been collecting costs through its FAC that are not eligible for inclusion in the FAC. Aquila requested refund of all amounts improperly billed since the inception of the contract in 1992, with interest. Aquila also noted in its complaint that its arguments respecting improper collection of costs through the FAC were substantially similar to allegations that Intermountain Rural Electric Cooperative (Intermountain), and Holy Cross Energy and Yampa Valley Electric Association (collectively, Holy Cross) had made in earlier complaints against PS Colorado.¹ Accordingly, Aquila suggested that the Commission could consolidate its complaint with the others.

¹ See *Intermountain Rural Electric Association v. Public Service Company of Colorado*, 99 FERC ¶ 61,279 (2002).

3. In an order dated January 31, 2002, the Commission found that Aquila had raised issues of material fact that were best resolved in an evidentiary hearing. As the issues raised by Aquila's complaint were substantially similar to issues that Intermountain and Holy Cross had raised in complaints against PS Colorado, the Commission consolidated the dockets for purposes of hearing and decision.² PS Colorado seeks rehearing of the January 31 Order.

PS Colorado's Request for Rehearing

4. PS Colorado claims that, when the Commission set the earlier Intermountain and Holy Cross complaints for hearing, the Commission explicitly limited the time period that would be under review to periods beginning in calendar year 2000. PS Colorado further notes that Aquila's complaint asked the Commission to direct PS Colorado to provide certain information dating back to 1992. The January 31 Order did not address Aquila's request, PS Colorado says, and cannot reasonably be read to expand the scope of the consolidated case to address pre-2000 costs. PS Colorado maintains that a reasonable reading of the January 31 Order is that, because Aquila provided no independent evidence that PS Colorado had not abided by its FAC prior to 2000, the Commission did not intend to address pre-2000 costs.

5. PS Colorado further argues that, to the extent the Commission's statements in the January 31 Order delegated to the Presiding Judge the task of defining the scope of the proceedings, the Commission erred. It states that, because Aquila's complaint depended on the evidence Intermountain and Holy Cross adduced, and proffered no independent evidence that PS Colorado's FAC charges for periods before January 1, 2000 were erroneous, the Commission should have limited the relief available to Aquila to the same post-January 1, 2000 relief sought by Intermountain and Holy Cross.

Discussion

6. We will deny PS Colorado's request for rehearing. The January 31 Order explained that Aquila's complaint sought relief back to 1992,³ and that "[t]he matters raised by Aquila in its complaint . . . are issues of material fact that are best resolved in an evidentiary hearing."⁴ We did not limit or qualify this statement, nor did we intend to do

² Aquila, Inc. v. Public Service Company of Colorado, 102 FERC ¶ 61,111 at P 12 (2003) (January 31 Order).

³ *Id.*, 102 FERC ¶ 61,111 at P 3.

⁴ *Id.*, 102 FERC ¶ 61,111 at P 12; accord id., 102 FERC ¶ 61,111 at Ordering Paragraph (A).

so. Aquila's allegations with respect to periods of time prior to calendar year 2000 therefore are proper subjects of the hearing established in the January 31 Order.⁵
The Commission orders:

PS Colorado's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ See City of Freeport, New York v. Consolidated Edison Company of New York, Order No. 443, 91 FERC ¶ 61,003 at 61,012 (2000), reh'g denied 101 FERC ¶ 61,225 (2002) ("The starting point for determination of the scope of this proceeding is the order establishing the hearing on Freeport's complaint.").